

REMARKS/ARGUMENTS

In the first Office Action issued in the subject application claims 6, 9, 10 and 15-17 were finally rejected. Claim 6 is the only independent claim, the remaining claims depending either directly or indirectly from claim 6.

Claim 6 was rejected as being anticipated by U.S. Patent No. 925,692 to Gold and was also rejected as being anticipated by U.S. Patent No. 1,501,552 to Bergman. As will be demonstrated below, the references cited by the Examiner do not meet the requirements needed to maintain a rejection under §102(b). Anticipation requires a single prior art reference that discloses each element of the claim. W.L. Gore & Associates v. Garlock, Inc., 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983), cert. denied 469 U.S. 851 (1984). Additionally, the single prior art reference must disclose each and every element of the claimed invention, arranged as in the claim. Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984). "There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention". Scripps Clinic & Research Foundation v. Genentech Inc., 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991). "The identical invention must be shown in as complete detail as is contained in the ... claim". Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989).

The Gold patent is not a proper anticipating reference because it does not disclose each and every element of the claimed invention. Moreover, there is significant difference between the claimed invention and the referenced disclosure as viewed by a person of ordinary skill in the field of the invention. This fact is made pellucidly clear in the Declaration by Keith Brown. It should be noted here that Mr. Brown has been working in the field to which this invention pertains for at least 34 years. He has extensive knowledge and experience with water treatment equipment and its ancillary components. He also is an inventor on many water treatment-related patents. The details of his background can be found in his Declaration. Mr. Brown is one having extraordinary skill in the art to which this invention pertains.

As articulated by Mr. Brown in his Declaration, paragraph b) of claim 6 sets forth a valve housing having a pair of ports for conveying fluid to and from a water treatment device. The Gold patent does not disclose a valve having ports for connection to a water treatment device. Gold discloses a "short circuiting" valve that is used in a heating system to control the flow of heating medium. As confirmed by Mr. Brown, a heating system is not a water treatment device.

As further explained by Mr. Brown, claim 6 also sets forth, rather specifically, a flow path that extends from a spool region to a transfer chamber. The flow path is detailed in paragraph i) of claim 6 where it states that the flow path extends from the

spool region, through openings in a disk-like member, through a chamber region, through a wall opening in a cylindrical wall and into the transfer chamber. As explained by Mr. Brown, this unique flow path is a critical feature of the invention and it enables the functions of the ports that are connected to the water treatment device to be switched (either port may be an inlet for delivering water to the water treatment device or an outlet for receiving treated water from the water treatment device).

The Gold patent does not disclose this flow path. The Examiner argues that the pressure region 40 corresponds to the claimed "chamber region" and argues that flow occurs from the spool region through openings 32 to the pressure chamber 40, flows through the pressure chamber 40 and returns back through the same openings 32. Mr. Brown explains why this flow pattern is not possible.

As also pointed out by Mr. Brown, Gold does not disclose a cylindrical wall. As explained by Mr. Brown, Gold discloses webs 24, 25, 26 and 27 which constitute seats for the rotary valve piece (see lines 66-69 on page 1 of the Gold patent).

As also discussed by Mr. Brown, Gold discloses "perforations" not "openings" and, more importantly, discloses at page 1, line 86, that his upper disk has one or more perforations. Clearly, Gold recognizes that flow does not occur through the pressure chamber 40 since his valve can function with only one perforation. How can one perforation support simultaneous flow into and out of a chamber? As further

stated by Mr. Brown, if the perforations disclosed by Gold were used in the claimed invention, it would become inoperative.

As also noted by Mr. Brown, the pressure region 40 disclosed in Gold only communicates with the casing chamber. It does not form part of a fluid flow path as specifically recited in claim 6. The Gold pressure chamber is a blind chamber and only communicates with the casing chamber; it does not communicate with a separate wall opening that is downstream from the casing chamber. Claim 6 is not anticipated by the Gold patent because the identical invention is not shown in as complete detail as is contained in the . . . claim. Richardson at 1236

Claim 6 was also rejected as being anticipated by the Bergman patent. This patent discloses a gas and air reversing valve used in connection with blast furnaces and blast stoves. The Bergman patent does not disclose a bypass/diverter valve for controlling the communication of a fluid supply to and from a fluid treatment device. As discussed above, and as noted by Mr. Brown, claim 6 specifically calls for a pair of ports, one of these ports for delivering fluid to be treated to a water treatment device, the other port of the pair for receiving treated fluid from the water treatment device. Bergman does not even remotely suggest a water treatment device in his disclosure or ports on a valve that are connected to a water treatment device. Neither a blast furnace nor a blast stove is a water treatment device.

As discussed above, claim 6 claims a rather specific fluid flow path that extends from a spool region through fluid openings in a disk-like member, through a chamber region and, finally, through a wall opening (defined in a cylindrical wall) and into a transfer chamber. Bergman does not disclose a wall opening in a cylindrical wall and certainly does not disclose the claimed flow path. Mr. Brown, in reviewing the Office Action, noticed that the Examiner does not point to any structure in the Bergman patent that corresponds to the particular structure claimed, i.e., transfer chamber, the chamber region, etc. The Examiner states that a flow path exists as recited through the openings in member 16. Claim 6 calls for an opening in a cylindrical wall, whereas the member 16 in Bergman is not a cylindrical wall and, therefore, there is no corresponding structure in the Bergman patent for the claimed cylindrical wall opening. As argued above in connection with the Gold patent, Bergman is not a proper anticipating reference because it does not show the identical invention in as complete detail as is contained in the rejected claim. Richardson

Finally, as discussed by Mr. Brown, this claimed bypass diverter valve represents a substantial improvement over the bypass valve disclosed in U.S. Patent No. 4,972,877. A bypass valve constructed in accordance with claim 6 has a pair of ports connected to a water treatment device, the functions of which can be switched to accommodate the existing plumbing configuration of the water treatment device.

The valves disclosed in the Gold and Bergman reference do not have this functionality which is made possible by the fluid flow path claimed in claim 6. The claimed flow path is not shown (or even suggested) in either of the cited patents.

In view of the above the Examiner is respectfully requested to withdraw the Gold and Bergman patents as anticipating references and that he withdraw the rejections of claim 6 under 35 U.S.C. §102(b). Claims 9, 10 and 15-17 depend directly or indirectly from allowable claim 6 and should also be allowed. Prompt notice to that effect is respectfully requested.

If the Examiner asserts that the evidence submitted with this response is insufficient to overcome the rejection, the Examiner is reminded that he must specifically explain why this evidence is insufficient. See MPEP §1302.14.

Please charge any deficiency or credit any overpayment in the fees for this response to our Deposit Account No. 20-0090.

Respectfully submitted,

/John R. Hlavka/

John R. Hlavka

Reg. No. 29,076

TAROLLI, SUNDHEIM, COVELL,
& TUMMINO LLP

CUSTOMER NO.:26294

Phone:(216) 621-2234

Fax: (216) 621-4072